

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

v.

No. CV 11-0098 JH/WPL
CR 06-2269 JH

JOSE VALENTIN MELENDEZ-DONES,

Defendant.

ORDER TO SHOW CAUSE

This matter is before the Court, *sua sponte* under 28 U.S.C. § 2255 R. 4(b), on Defendant's motion to vacate, set aside, or correct sentence under 28 U.S.C. § 2255 (CV Doc. 1; CR Doc. 56) and motion to proceed in forma pauperis ("IFP") (CV Doc. 2; CR Doc. 57) filed on January 28, 2011. It appears from the record that Defendant has previously been found indigent (CR Doc. 31) and thus the IFP motion is moot. Defendant will be required to show cause why his § 2255 motion should not be dismissed as untimely.

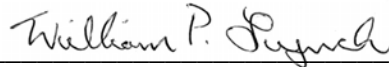
The Court entered judgment on Defendant's conviction on August 15, 2007 (CR Doc. 45). On April 22, 2008, the Court of Appeals for the Tenth Circuit affirmed Defendant's conviction (CR Doc. 55). Defendant did not seek certiorari in the Supreme Court. On January 28, 2011, Defendant filed his § 2255 motion, long after expiration of the one-year limitation period in § 2255. *See United States v. Willis*, 202 F.3d 1279, 1280 (10th Cir. 2000). His motion is thus barred and must be dismissed unless there is a basis for tolling. *See United States v. Cordova*, No. 99-1306, 1999 WL 1136759, at **1 (10th Cir. Dec. 13, 1999).

The Court raises the time bar to Defendant's § 2255 motion *sua sponte* and will allow Defendant an opportunity to respond. *See Hare v. Ray*, No. 00-6143, 2000 WL 1335428, at **1

(10th Cir. Sept. 15, 2000) (noting that timeliness was raised *sua sponte* and allowing response); *Hines v. United States*, 971 F.2d 506, 507-09 (10th Cir. 1992) (same for procedural default). The Court will allow Defendant to show cause why his § 2255 motion should not be dismissed as untimely. Failure to respond to this Order or otherwise show cause may result in dismissal of the motion without further notice.

IT IS THEREFORE ORDERED that Defendant's motion to proceed in forma pauperis (CV Doc. 2; CR Doc. 57) is DENIED as moot;

IT IS FURTHER ORDERED that, within thirty (30) days from entry of this order, Defendant may file a response to this Order showing cause, if any, why his § 2255 motion should not be dismissed as untimely.



William P. Lynch
United States Magistrate Judge